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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,988	04/04/2001	Fumito Kameyama	09792909-4986	3737

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SONNENSCHN NATH & ROSENTHAL LLP
P.O. BOX 061080
WACKER DRIVE STATION, SEARS TOWER
CHICAGO, IL 60606-1080

EXAMINER

WEINER, LAURA S

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 10/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/825,988

Applicant(s)

KAMEYAMA ET AL.

Examiner

Laura S Weiner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 8-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group I, claims 1-7 in Paper No. 7 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 8-22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7.

Claim Rejections - 35 USC § 112

3. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 is rejected because the phrase "ether-based polymers such as poly(ethylene oxide) and a crosslinked of the poly(ethylene oxide), ..., and fluorine polymer such as ...is/are used" makes the claim vague and indefinite. It is unclear what the Markush choices are. Also, use of "such as" also makes the claim vague and indefinite.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 6-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Negoro et al. (5,976,731).

Negoro et al. teaches in the abstract, a non-aqueous lithium ion secondary battery comprising a positive electrode, a negative electrode, an electrolyte and a separator in a sealed case. Negoro et al. teaches in column 2, lines 39-50, a non-aqueous lithium ion secondary battery having a container. Negoro et al. teaches in column 50, lines 1-25, that the battery container can be made of a nickel-plated iron steel plate, a stainless steel plate, etc. Negoro et al. teaches in column 47, line 51 to column 48, line 50, that the positive electrode active material comprises a lithium-containing transition metal oxide such as Li_xCoO_2 , Li_xNiO_2 , etc. and that polymers such as polyfluorinated vinylidene can be present. Negoro et al. teaches in column 23, lines 15-21, that the lithium salts include LiBCl_4 , LiBF_4 , etc. Negoro et al. teaches in column 52, lines 40-54, that the electrolyte solution contained a water content of 18 ppm and a free acid of 24 ppm.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2-5 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Negoro et al. (5,976,731).

Negoro et al. teaches in the abstract, a non-aqueous lithium ion secondary battery comprising a positive electrode, a negative electrode, an electrolyte and a separator in a sealed case. Negoro et al. teaches in column 2, lines 39-50, a non-aqueous lithium ion secondary battery having a container. Negoro et al. teaches in column 50, lines 1-25, that the battery container can be made of a nickel-plated iron steel plate, a stainless steel plate, etc. Negoro et al. teaches in column 47, line 51 to column 48, line 50, that the positive electrode active material comprises a lithium-containing transition metal oxide such as Li_xCoO_2 , Li_xNiO_2 , etc. and that polymers such as polyfluorinated vinylidene can be present. Negoro et al. teaches in column 23, lines 15-21, that the lithium salts include LiBCl_4 , LiBF_4 , etc. Negoro et al. teaches in column 52, lines 40-54, that the electrolyte solution contained a water content of 18 ppm and a free acid of 24 ppm.

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In the event any differences can be shown for the product of the product by process claim 2, as opposed to the product taught by Negoro et al., such differences would have been obvious to one of ordinary skill in the art as a routine modification of the product in the absence of a showing of unexpected results. *In re Thrope* 227 USPQ 964; (Fed. Cir. 1985).

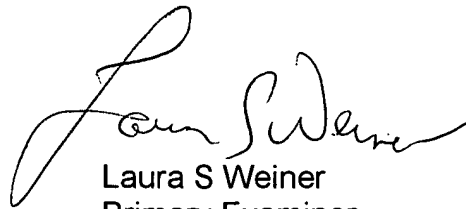
With respect to the product by process claim 2, the determination of patentability is based upon the product itself not upon the method of its production. *In re Thrope* 227 USPQ 964; *In re Brown* 173 USPQ 685; *In re Bridgeford* 149 USPQ 55; *In re Wertheim* 191 USPQ 90. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the Examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the Applicants to establish that their product is patentably distinct. *In re Brown* 173 USPQ 685 and *In re Fessmann* 180 USPQ 324.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura S Weiner whose telephone number is 703-308-4396. The examiner can normally be reached on M-F (7:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 703-308-2383. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

A handwritten signature in black ink, appearing to read "Laura S. Weiner". The signature is fluid and cursive, with the first name "Laura" being more prominent than the last name "Weiner".

Laura S Weiner
Primary Examiner
Art Unit 1745

October 23, 2003